

In re: WAYNE H. CRITES.
P&S Docket No. D-00-0003.
Decision and Order filed June 6, 2000.

JoAnn Waterfield, for Complainant.
Respondent, Pro se.

Decision and Order issued by Edwin S. Bernstein, Administrative Law Judge.

This is a disciplinary proceeding under the Packers and Stockyards Act, 1921, as amended and supplemented (7 U.S.C. § 181 *et seq.*), herein referred to as the Act, instituted by a complaint filed by the Administrator, Packers and Stockyards Programs, Grain Inspection, Packers and Stockyards Administration, United States Department of Agriculture, charging that the Respondent willfully violated the Act.

Copies of the complaint and the Rules of Practice (7 C.F.R. § 1.130 *et seq.*) governing proceedings under the Act were served upon Respondent Wayne H. Crites by certified mail received April 13, 2000. Respondent Wayne H. Crites was informed in a letter of service that an answer should be filed pursuant to the Rules of Practice and that failure to answer would constitute an admission of all the material allegations contained in the complaint.

Respondent Wayne H. Crites has failed to file an answer within the time prescribed in the Rules of Practice, and the material facts alleged in the complaint, which are admitted by Respondent Wayne H. Crites' failure to file an answer, are adopted and set forth herein as findings of fact.

This decision and order, therefore, is issued pursuant to section 1.139 of the Rules of Practice (7 C.F.R. § 1.139).

Findings of Fact

1. (a) Wayne H. Crites (hereinafter referred to as Respondent) is an individual whose business mailing address is 7 Hill Top Lane, Moorefield, West Virginia 26836.

2. (b) Respondent is, and at all times material herein was:

(1) Engaged in the business of a dealer buying and selling livestock in commerce for his own account or the accounts of others and as a market agency buying livestock in commerce on a commission basis; and

(2) Registered with the Secretary of Agriculture as a dealer to buy and sell livestock in commerce for his own account and as a market agency to buy livestock in commerce on a commission basis.

2. On or about the dates set forth in paragraph II of the complaint, Respondent Wayne H. Crites had current liabilities that exceeded his current assets. As set forth in the complaint, the current liabilities of Wayne H. Crites presently exceed his current assets.

3. As set forth more fully in paragraph III of the complaint, Respondent

Wayne H. Crites operated subject to the Act while his current liabilities exceeded his current assets during the period October 31, 1998 through November 16, 1998.

4. (a) Respondent Wayne H. Crites, on or about the dates and in the transactions set forth in paragraph IV(a) of the complaint, purchased livestock and, in purported payment, issued checks which were returned unpaid by the bank upon which they were drawn because Respondent Wayne H. Crites did not have sufficient funds on deposit and available in the account upon which such checks were drawn to pay such checks when presented.

(b) Respondent Wayne H. Crites, on or about the dates and in the transactions set forth in paragraph IV(b) of the complaint, purchased livestock and failed to pay, when due, the full purchase price of such livestock.

(c) Respondent Wayne H. Crites, on or about the date and in the transaction set forth in paragraph IV(c) of the complaint, purchased livestock and failed to pay the full purchase price of such livestock.

5. As set forth more fully in paragraph V of the complaint, Respondent Wayne H. Crites failed to keep and maintain accounts, records, and memoranda which fully and accurately disclosed all transactions in his business as a market agency and dealer under the Act.

Conclusions

By reason of the facts alleged in Paragraph II of the complaint, Respondent Wayne H. Crites' financial condition does not meet the requirements of the Act (7 U.S.C. § 204).

By reason of the facts alleged in Paragraph III of this complaint, Respondent Wayne H. Crites willfully violated section 312(a) of the Act (7 U.S.C. § 213(a)).

By reason of the facts alleged in Paragraph IV of this complaint, Respondent Wayne H. Crites willfully violated sections 312(a) and 409 of the Act (7 U.S.C. §§ 213(a), 228b).

By reason of the facts alleged in Paragraph V of this complaint, Respondent Wayne H. Crites willfully violated section 401 of the Act (7 U.S.C. § 221).

Order

Respondent Wayne H. Crites, his agents and employees, directly or indirectly through any corporate or other device, shall cease and desist from:

1. Purchasing livestock while insolvent, that is, while his current liabilities exceed his current assets;
2. Issuing checks in payment for livestock purchases without maintaining sufficient funds on deposit and available in the account upon which such checks were drawn to pay such checks when presented;
3. Failing to pay, when due, the full purchase price of livestock; and

4. Failing to pay the full purchase price of livestock.

Respondent Wayne H. Crites shall keep and maintain accounts, records and memoranda which fully and correctly disclose all transactions involved in his business as a market agency and dealer under the Act, including, but not limited to check book registers, canceled and returned checks, and purchase invoices.

Respondent Wayne H. Crites is suspended as a registrant under the Act for a period of five (5) years and thereafter until solvency is demonstrated; *provided*, however, that upon application to the Packers and Stockyards Programs and demonstration that current liabilities no longer exceed current assets and that all unpaid livestock sellers identified in the complaint have been paid in full, a supplemental order may be issued terminating the suspension in this proceeding at any time after the expiration of 90 days of this suspension. *Provided further*, that upon application to the Packers and Stockyards Programs and demonstration of circumstances warranting modification of this order, this order may be modified to permit Respondent Wayne H. Crites' salaried employment by another registrant or packer after the expiration of 90 days of the suspension in this proceeding.

The decision shall become final and effective without further proceedings 35 days after the date of service upon Respondent Wayne H. Crites, unless it is appealed to the Judicial Officer by a party to the proceeding within 30 days pursuant to section 1.145 of the Rules of Practice (7 C.F.R. § 1.145).

Copies hereof shall be served upon the parties.

[This Decision and Order became final July 10, 2000.--Editor]
